

Claimant testified that he injured his neck while riding on a fertilizer spreader in the course of his duties for respondent. Claimant acknowledged that he did not notify his employer when he first began experiencing symptoms. According to claimant, on September 10, 1997, he told his supervisor it was “beating me to death.” On

September 18, 1997, again according to claimant's testimony, claimant presented his supervisor with a note from Dr. Eustaquio O. Abay, II. At that time claimant advised his supervisor that the bouncing up and down on the spreader was causing pain in his shoulder.

Respondent presented testimony from the claimant's supervisor which, in significant part, contradicts claimant's testimony. The supervisor indicates he was aware of a prior neck injury and assumed that claimant's complaints were related to that prior neck injury.

The ALJ obviously found claimant's testimony to be credible. The ALJ observed both witnesses testifying and the Appeals Board, after reviewing the testimony, adopts the finding by the ALJ on this issue. The Appeals Board also finds that the statements made by claimant to respondent were sufficient to give notice as required by K.S.A. 44-520.

The second issue raised by respondent, namely whether the benefits should have been ordered to be paid back from a date earlier than the Application for Preliminary Hearing, is not a jurisdictional issue. It is not an issue listed in K.S.A. 1997 Supp. 44-534a. The contention that the ALJ erred in this respect does not otherwise constitute an allegation that he exceeded his jurisdiction.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge John D. Clark on April 7, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1998.

BOARD MEMBER

c: Steven L. Foulston, Wichita, KS
Eric K. Kuhn, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director